

HOUSE BILL 879

By Johnson P

AN ACT to amend Tennessee Code Annotated, Title 36,
Chapter 6, relative to child custody and visitation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, is amended by inserting Sections 2 through 10 below as a new, appropriately designated part thereto.

SECTION 2. If a person has been granted visitation with that person's child pursuant to § 36-6-301, and if any court exercising jurisdiction over custody or visitation matters pertaining to that person's children previously has found by a preponderance of the evidence that the parent physically or sexually abused a child or if that parent has been convicted of an offense involving child abuse, as defined in §§ 39-15-401 or 39-15-402, or child sexual abuse, as defined in § 37-1-602, then:

(1) Any child under eighteen (18) years of age who has been subjected to, threatened with, or placed in fear of child abuse or child sexual abuse by such parent may seek temporary relief from a visitation order requiring visitation with such parent pursuant to this part by filing a sworn petition alleging such child abuse or child sexual abuse.

(2) The petition shall be signed by one (1) of the child's parents or by the child's guardian. In cases before the juvenile court where the department of children's services is a party or where a guardian ad litem has been appointed for the child by the juvenile court, the petition may be filed on behalf of the child by the department or the guardian ad litem.

(3) Venue for a petition for a temporary order to suspend visitation, and all other matters relating to such visitation, shall be in the court that granted the visitation order to the respondent.

SECTION 3.

(a) The office of the clerk of court shall provide forms that may be necessary to seek a temporary order to suspend visitation pursuant to this part. These forms shall be limited to use in causes filed pursuant to this part and they shall be made available to all who request assistance in filing a petition. The petitioner is not limited to the use of these forms and may present to the court any legally sufficient petition in whatever form. The office of the clerk shall also assist a person who is not represented by counsel by filling in the name of the court on the petition, by indicating where the petitioner's name shall be filled in, by reading through the petition form with the petitioner, and by rendering any other such assistance as is necessary for the filing of the petition. All such petitions that are filed pro se shall be liberally construed in favor of the petitioner.

(b) The administrative office of the courts shall develop a "Petition for Temporary Order to Suspend Visitation" form and such other forms as are found to be necessary and advisable. These forms shall be used exclusively in all courts exercising jurisdiction over temporary orders to suspend visitation.

SECTION 4.

(a) Upon the filing of a petition pursuant to this part, the courts may immediately, for good cause shown, issue an ex parte temporary order to suspend visitation. An immediate and present danger of child abuse or child sexual abuse shall constitute good cause for purposes of this section.

(b) Within fifteen (15) days of service of such order on the respondent pursuant to this part, a hearing shall be held, at which time the court shall dissolve any ex parte temporary order to suspend visitation that has been issued and shall, in the court's discretion, either leave unchanged or modify or amend the court's previous visitation order pursuant to the requirements of § 36-6-301. Any ex parte temporary order to

suspend visitation shall be in effect until the time of the hearing, and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent order concerning visitation with the child issued pursuant to § 36-6-301.

(c) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte temporary order to suspend visitation, to be served upon the respondent at least five (5) days prior to such hearing. An ex parte order issued pursuant to this part shall be personally served upon the respondent. However, if the respondent is not a resident of Tennessee, the ex parte order shall be served pursuant to §§ 20-2-215 and 20-2-216. Such notice shall advise the respondent that the respondent may be represented by counsel.

SECTION 5.

(a) A temporary order to suspend visitation immediately shall terminate all visitation, including supervised visitation, between the respondent and the child or children who are the petitioners. In addition, such an order may:

(1) Direct the respondent to refrain from committing child abuse or child sexual abuse, or from threatening to commit child abuse or child sexual abuse, against the petitioner children;

(2) Prohibit the respondent from telephoning, contacting, or otherwise communicating with the petitioner children, directly or indirectly; and

(3) Prohibit the respondent from coming within a certain geographic distance of the petitioner children or the children's parent or guardian.

(b) Any temporary order to suspend visitation issued pursuant to this part shall include the statement of the maximum penalty that may be imposed for violating such order.

(c) A temporary order to suspend visitation issued pursuant to this part shall be valid and enforceable in any county of this state.

(d) The court shall not require the execution of a bond by the petitioner to issue any temporary order to suspend visitation pursuant to this part.

SECTION 6. A copy of any temporary order to suspend visitation and any subsequent modifications or dismissal shall be issued to the petitioner, the respondent, and the local law enforcement agencies having jurisdiction in the area where the petitioner resides. Upon receipt of the copy of the temporary order to suspend visitation or dismissal from the issuing court or clerk's office, the local law enforcement agency shall immediately enter such order or dismissal in the Tennessee crime information system and take any necessary action to immediately transmit it to the national crime information center.

SECTION 7.

(a) Upon violation of the temporary order to suspend visitation, the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law. A judge of the general sessions court shall have the same power as a court of record to punish the defendant for contempt when exercising jurisdiction pursuant to this part or when exercising concurrent jurisdiction with a court of record. A judge of the general sessions court who is not a licensed attorney shall appoint an attorney referee to hear charges of criminal contempt.

(b) In addition to the authorized punishments for contempt of court, the judge may assess any person who violates a temporary order to suspend visitation a civil penalty of fifty dollars (\$50.00). Upon collecting this civil penalty, the clerk shall, on a monthly basis, send the money to the state treasurer who shall deposit it in the domestic violence community education fund created by § 36-3-616.

SECTION 8.

(a) An arrest for violation of a temporary order to suspend visitation issued pursuant to this part may be with or without warrant. Any law enforcement officer shall arrest the respondent without a warrant if:

(1) The officer has proper jurisdiction over the area in which the violation occurred;

(2) The officer has reasonable cause to believe the respondent has violated or is in violation of a temporary order to suspend visitation; and

(3) The officer has verified whether a temporary order to suspend visitation is in effect against the respondent. If necessary, the police officer may verify the existence of a temporary order to suspend visitation by telephone or radio communication with the appropriate law enforcement department.

(b) No ex parte temporary order to suspend visitation can be enforced by arrest pursuant to this section until the respondent has been served with the order or otherwise has acquired actual knowledge of such order.

SECTION 9.

(a) A person who knowingly violates a temporary order to suspend visitation issued pursuant to this part commits the offense of violation of a temporary order to suspend visitation.

(b) In order to be found guilty pursuant to this section, the person must have been served with the temporary order to suspend visitation or otherwise have acquired actual knowledge of such order.

(c) Any act that constitutes the offense of violation of a temporary order to suspend visitation shall be subject to arrest, as set forth in this part.

(d) A person who is arrested for violation of a temporary order to suspend visitation shall be considered within the provisions of § 40-11-150(a), and subject to the twelve-hour hold period authorized by § 40-11-150(h).

(e) At the time the issue of bond is being determined, the magistrate shall notify, or cause to be notified, the child's parent or guardian that the defendant has been arrested.

(f) Neither an arrest nor the issuance of a warrant or capias for the offense of violation of a temporary order to suspend visitation shall in any way affect the validity or enforceability of any such order.

(g) Violation of a temporary order to suspend visitation is a Class A misdemeanor and any sentence on the same factual allegations, unless the sentencing judge or magistrate specifically imposed shall be consecutive to any other offense that is based, in whole or in part, makes the sentences for any such offenses arising out of the same facts to be concurrent with one another.

SECTION 10. Notwithstanding any other provision of law to the contrary, the petitioner shall not be required to pay any filing fees, litigation taxes or any other costs associated with the filing, issuance, service or enforcement of a temporary order to suspend visitation authorized by this part upon the filing of the petition. The judge may assess court costs and litigation taxes at the hearing of the petition or upon dismissal of the petition, or such costs may be assessed against the respondent in the discretion of the court.

SECTION 11. This act shall take effect July 1, 2007, the public welfare requiring it.